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GOVERNMENT RELATIONS

July 29, 2005

214440

JUL 29 2005

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Santa Clara Valley Transportation Authority – Abandonment Exemption – In  
Santa Clara County, California and Alameda County, California (San Jose  
Industrial Lead) (WP Milpitas Line); Docket No. AB-980

Dear Sir:

I am enclosing an original and ten (10) copies of the Notice of Intent of Santa Clara Valley Transportation Authority to Seek Abandonment Exemption in the above referenced matter. An extra copy is enclosed for date stamp and return to our messenger. In addition, we are enclosing a diskette with this document.

No filing fee is included for this document pursuant to 49 C.F.R. § 1002.2(e)(1) because it is filed on behalf of Santa Clara Valley Transportation Authority which is a local government entity.

Sincerely,

  
Alex Menendez

Enclosure

cc: All parties on the Certificate of Service

ENTERED  
Office of Proceedings

Part of  
Public Record

214440

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-980

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
- ABANDONMENT EXEMPTION --  
IN SANTA CLARA COUNTY, CALIFORNIA AND ALAMEDA COUNTY, CALIFORNIA  
(SAN JOSE INDUSTRIAL LEAD)  
(WP MILPITAS LINE)

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**NOTICE OF INTENT OF  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
TO SEEK ABANDONMENT EXEMPTION**

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Communications with respect to this document  
should be addressed to:

Charles A. Spitulnik  
Alex Menendez  
McLEOD, WATKINSON & MILLER  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, D.C. 20001  
(202) 842-2345

Suzanne Gifford  
Kevin Allmand  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building C-2  
San Jose, CA 95134

Attorneys for Santa Clara Valley  
Transportation Authority

Dated: July 29, 2005

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Office of Proceedings  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
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(WP MILPITAS LINE)

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**NOTICE OF INTENT OF  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
TO SEEK ABANDONMENT EXEMPTION**

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Santa Clara Valley Transportation Authority ("VTA") through counsel and pursuant to 49 U.S.C. § 10903 and 49 C.F.R. § 1152.20 hereby files this Notice of Intent to Petition for Abandonment Exemption ("Notice") with respect to the abandonment of any residual common carrier obligations it may have with respect to the: 1) San Jose Industrial Lead from milepost 16.3 to milepost 17.49, a distance of 1.19 miles in Santa Clara County, California (the "Industrial Line"); and 2) the Milpitas Subdivision from mile post 2.61 near Clark Drive at Niles Junction to milepost 5.38 near Grimmer Boulevard, a distance of 2.77 miles in and near Fremont, Alameda County, California (the "Milpitas Line").

**I. Notice of Intent to Abandon**

VTA gives notice that on or before August 18, 2005, it intends to file with the STB a petition for abandonment of any residual common carrier obligation it may have with respect to

the Industrial Line and the Milpitas Line. A description of the Industrial Line and the Milpitas Line, and a map showing their location are attached as Exhibit A.

VTA is proposing to abandon its residual common carrier obligations over the Industrial Line and the Milpitas Line. There are no shippers on the Line that will be adversely affected by the proposed abandonment. The only shipper on the Industrial Line is Smurfit Stone Recycling Corporation ("Smurfit"). Smurfit will continue to receive rail service from Union Pacific Railroad ("UP") on UP's line of railroad which is just southeast of the San Jose Industrial Lead. See Exhibit A for a general overview of the proximity and location of the planned alternate UP spur line connection with Smurfit. There is no practicable possibility for substantial new rail business on the Line. Any overhead traffic can move over an adjacent UP line.

The reason for the proposed abandonment is that the public interest is no longer served by maintaining the residual common carrier obligations *vis a vis* the Industrial Line and the Milpitas Line. As to the Industrial Line there will be no adverse effect on shippers on the Industrial Line because the sole provider of direct rail service has already secured authority to discontinue operations. Development in the area of San Jose served by the San Jose Industrial Lead is shifting away from rail oriented industries, decreasing the likelihood that a major new rail oriented shipper would be interested in locating on the Industrial Line. Any overhead traffic through San Jose can move over an adjacent UP line.

As to the Milpitas Line no local traffic has moved over the portion of the Milpitas Line described in this petition in the past five years, and there is no overhead traffic on the Line. The property includes a portion of right-of-way that was sold by UP to the VTA in December, 2002 for future extension of the BART mass transit system. At that time UP retained a freight easement, which it has subsequently discontinued, over the portion of the Milpitas Line

described in this petition. The southern part of the right-of-way will be used for passenger light rail purposes. There will be no effect on regional or local transportation systems and patterns and no diversion of traffic to other transportation systems or modes. The Milpitas Line has not been used for freight traffic for at least five years. All overhead traffic has already been rerouted to an adjacent parallel rail route on the UP line which is no more than one half (1/8) mile from the Milpitas Line. Use of this route for overhead traffic will continue after abandonment.

Based on information in VTA's possession, the subject property does not contain federally granted rights-of-way. Any documentation in the VTA's possession related to the subject property will be made available promptly to those requesting it.

VTA believes that no railroad employees' interests will be adversely be affected by the proposed abandonment.

The petition for exemption will include the applicant's entire case for the abandonment. Any interested person, after the application is filed on or before August 18, 2005, may file with the STB written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, and that VTA is currently developing plans for such use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also

file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
  - (i) A description of protestant's use of the line:
  - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
  - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].
- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;
- (ii) Environmental impact;
- (iii) Impact on rural and community development;
- (iv) Recommended provisions for protection of the interests of employees;
- (v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and
- (vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment application; (3) the feeder line application was filed prior to the date the abandonment application was filed; and (4) the feeder line application is pending before the Board.

The Board in determining what disposition to make of the application will consider written comments and protests. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to ¶ 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation (STB Docket No. AB-980) and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than 45 days after the date the application for abandonment is filed. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon: Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, N.W., Suite 800, Washington, D.C. 20001, the representative of the applicant. The original and 10 copies of all comments or protests shall be

filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned may be available for subsidy, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27), unless the Board exempts the parties from the application of those requirements in view of the public purpose to be served by the abandonment of the line. No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection as soon as it is filed, on or before August 28, 2005 at the offices of the VTA, 3331 North First Street, Building C-2 San Jose, CA. 95134. VTA shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

An environmental assessment prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the environmental assessment (or Environmental Impact Statement) may contact the Section of Environmental Analysis. Environmental assessments in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of

comments on the environmental assessments will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental environmental assessment or Environmental Impact Statement may be issued where appropriate.

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik  
Alex Menendez  
McLEOD, WATKINSON & MILLER  
One Massachusetts Avenue, N.W.  
Suite 800  
Washington, D.C. 20001  
(202) 842-2345

Suzanne Gifford  
Kevin Allmand  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building C-2  
San Jose, CA 95134

Attorneys for Santa Clara Valley  
Transportation Authority

Dated: July 29, 2005

## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Notice of Intent of Santa Clara Valley Transportation Authority to Seek Abandonment Exemption to be served by first class mail, postage prepaid upon the following:

Smurfit Stone Recycling  
205 East Alma Avenue  
San Jose, CA 95112

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

U.S. Department of Transportation  
400 Seventh Street, S.W.  
Room 4102 C-30  
Washington, D.C. 20590

U.S. Department of the Interior  
National Park Service  
Recreation Resources Assistance Division  
P. O. Box 37127  
Washington, D.C. 20013-7127

Governor Arnold Schwarzenegger  
State Capitol Building  
Sacramento, CA 95814

Lucrecia Farfan-Ramirez  
County Director, Cooperative Extension  
Alameda County  
1131 Harbor Parkway, Suite 131  
Alameda, CA 94502

Maria de la Fuente  
County Director  
OCCE Santa Clara County  
1553 Berger Drive, Building 1  
San Jose, CA 95112

U.S. Department of Defense  
OASD(PA)PIA  
1400 Defense Pentagon  
Room 3A750  
Washington, D.C. 20301-1400

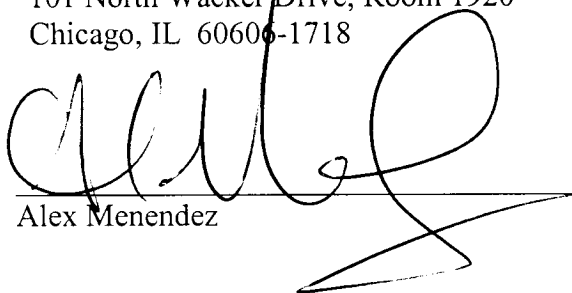
U.S. Railroad Retirement Board  
Federal Building, Room 3404  
26 Federal Plaza  
New York, NY 10278-0105

Dale Bosworth  
Chief of the Forest Service  
U.S. Department of Agriculture  
201 14<sup>th</sup> Street, S.W.  
Washington, D.C. 20024

W. L. Phillips, General Counsel  
Brotherhood of Railroad Signalmen  
310 South Michigan Avenue, #1310  
Chicago, IL 60604

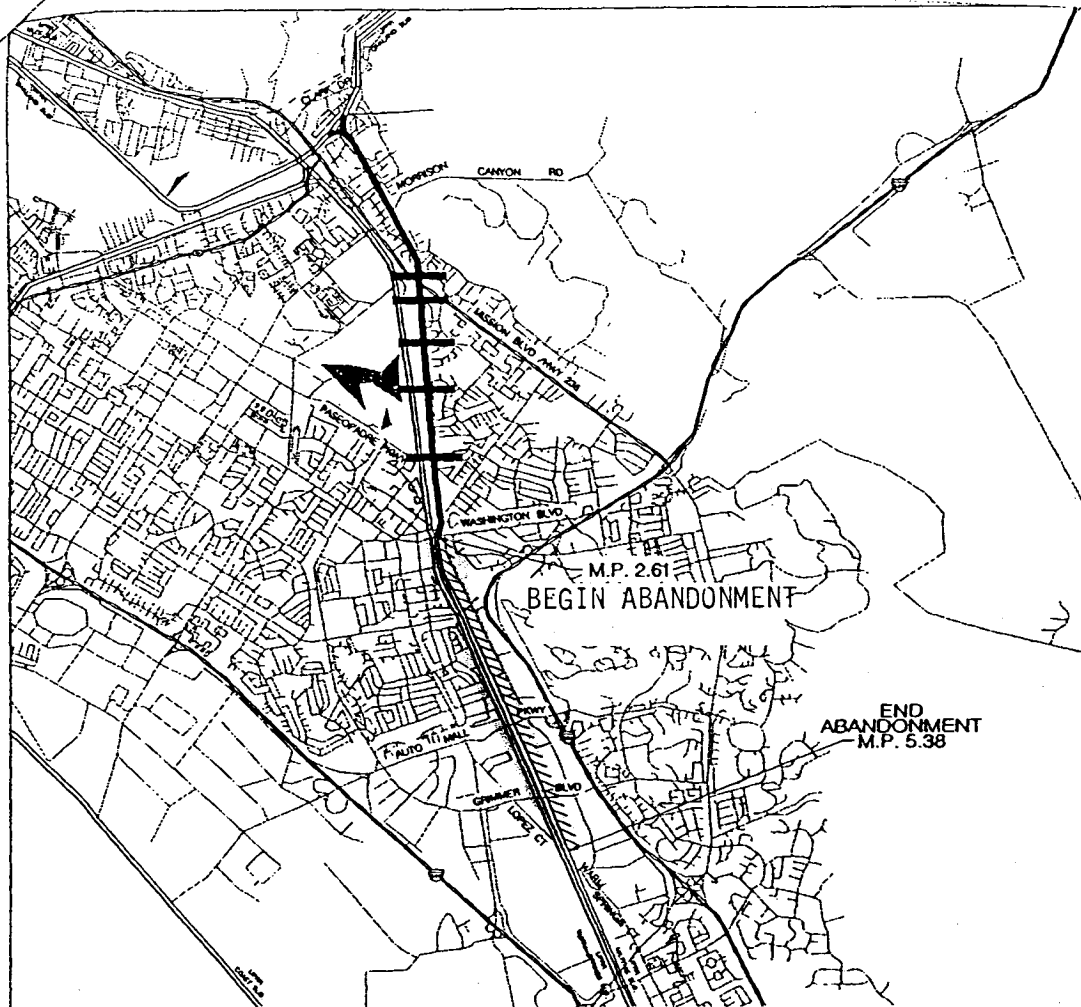
Mack H. Shumate, Jr.  
Senior General Attorney, Law Department  
Union Pacific Railroad Company  
101 North Wacker Drive, Room 1920  
Chicago, IL 60606-1718

Dated: July 29, 2005



Alex Menendez

A



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
LJ2	1 SPAN TPIBO	15'	UNKNOWN
L38	1 SPAN TPIBO	30'	1921
L79	1 SPAN TPIBO	45'	UNKNOWN
2.03	1 SPAN TPIBO	15'	UNKNOWN
2.58	1 SPAN TPIBO	27'	UNKNOWN - > 50 YRS

#### LEGEND

- UPRR LINES TO BE ABANDONED
- //// UPRR TRACKAGE RIGHTS OVER SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- OTHER UPRR LINES
- ++++ OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

#### MILPITAS SUBDIVISION

MP 0.0 TO MP 5.38  
TOTAL OF 5.38 MILES  
IN ALAMEDA COUNTY, CALIFORNIA

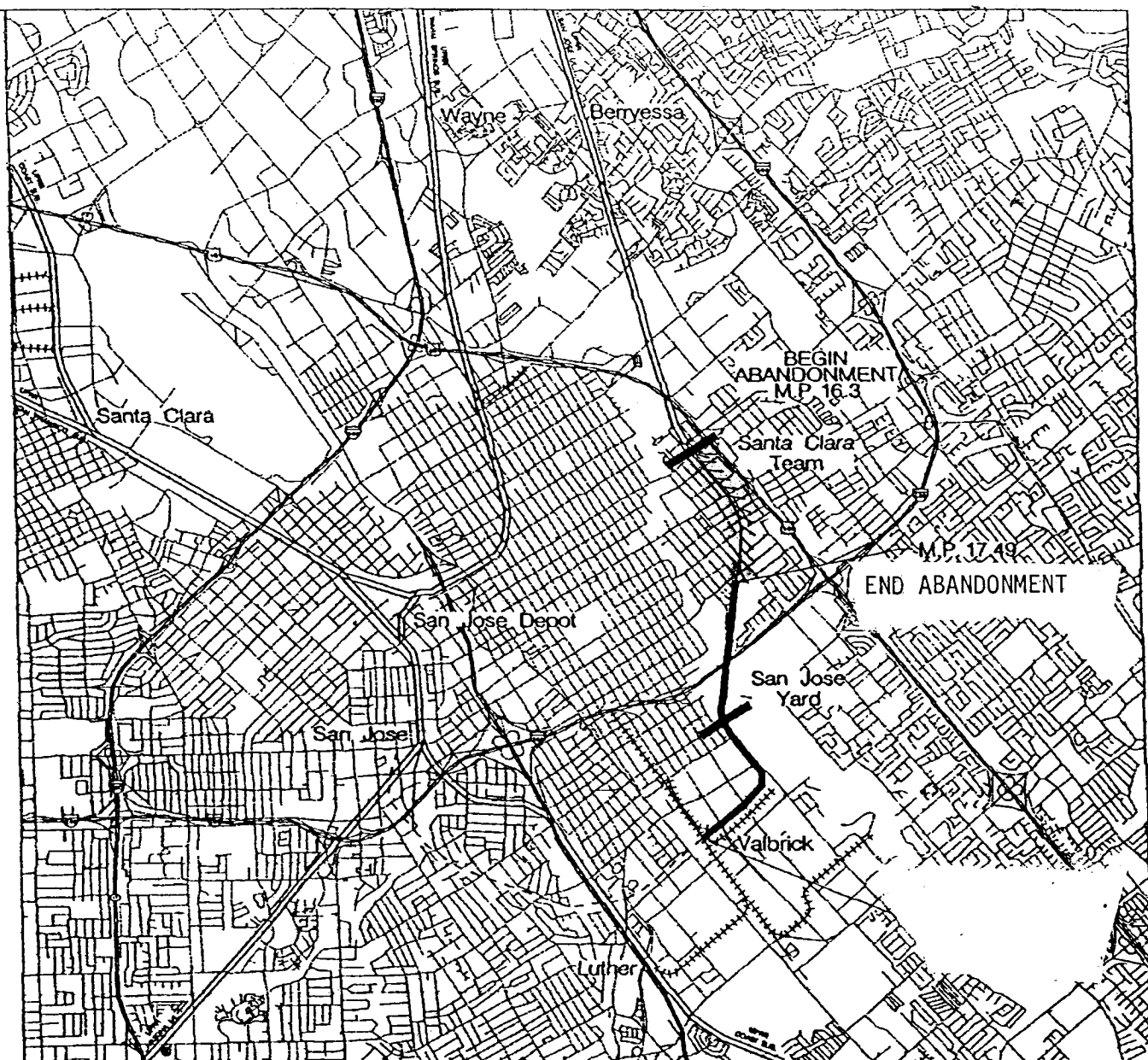
#### MILPITAS SUBDIVISION

NILES JCT. TO WARM SPRINGS, CALIFORNIA  
INCLUDING 50+ YEAR OLD STRUCTURES

SCALE 0 1 2 MILES

FILE: q:\abandonments\ab0336\_milpitas.dgn

DATE: 26-Jun-03 13:41



BRIDGE NO.	BRIDGE TYPE	TOTAL LENGTH	DATE
18.32	S SPAN TPTSD	75	UNKNOWN
18.43	T3 SPAN TPTSD	207	UNKNOWN

### LEGEND

- UPRR LINES TO BE ABANDONED
- UPRR TRACKAGE RIGHTS OVER SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
- ABANDONED TRACK
- OTHER UPRR LINES
- OTHER RAILROADS
- PRINCIPAL HIGHWAYS
- OTHER ROADS
- 50+ YEAR OLD STRUCTURES

### SAN JOSE INDUSTRIAL LEAD

MP 16.3 TO MP 19.6  
TOTAL OF 3.3 MILES  
IN SANTA CLARA COUNTY, CALIFORNIA

SAN JOSE INDUSTRIAL LEAD  
SANTA CLARA TEAM TO VALBRICK, CALIFORNIA  
INCLUDING 50+ YEAR OLD STRUCTURES

SCALE MILES

FILE: q:\abandonments\ab0343\_san.jose.dgn

DATE: 06-May-04 09:40

AB-33(Sub-No. 221X)